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FEDERAL COMMUNICATIONS COMMISSION

April 8, 1996

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Office of the Secretary, Federal Communications Commission  
1919 M Street  
Washington, D.C.  
Re: CC Docket 96-45

The FCC has issued a Notice of Proposed Rulemaking concerning its duties to provide discounted universal service and advanced telecommunications services to elementary and secondary schools and libraries (NPRM Sections 71-87).

I should like to suggest an optional approach to encourage local determinations for a universal service program in areas where there is an institution capable of developing such an approach.

Section 254 (h)(1)(B) of the 1996 Act states that "all telecommunications carriers servicing a geographic area shall, upon bona fide request for any of its services that are within the [definition of] universal service [and additional services], provide such service to ...schools...at rates less than the amounts charged for similar services to other parties." Further, the rate must be such as to make access "affordable."

The FCC has indicated its desire to know the particular needs of K-12 so as to determine what services should be provided at what discount (NPRM Sections 71, 72, 78, 80). In general, the inquiry is directed at telecommunications services and primarily only include the transmission aspects of the system, not the computers or the data bases.

As with historic efforts running a "universal service" program for basic telephony, this is a huge undertaking. But it is also a huge departure, in terms of the nature of the services to be subsidized, the potential impact on the availability of educational technology, the impact on society, the varied nature of the communities to be served and the value of the services ultimately to be rendered. The challenge is to establish a national approach that is sensitive to complex local needs.

The structure of the distribution of K-12 educational services and their relationship to telecommunications providers is so different from community to community, in other words, that some mechanism should be included in the proposed Rules that encourages local or regional compacts between educational systems and telecommunications providers.

In some communities, like New York, there is a rich combination of parochial, private and public education, each with their own needs. There will be difficult questions whether a comprehensive system, involving all educational providers, should be developed or whether the telecommunications entities should deal separately with each system. In some communities, the pace and order of supplying enhanced universal service can serve to resolve

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issues of constitutional fairness, including ameliorating the harms of racial isolation. In some areas, a standard may already have been established by the provision of services at model schools, or in the private systems.

Furthermore, the introduction of universal service improvements has to be tied to teacher training, to restructuring of curriculum, to reeducation of administrative staff. Too often, the schools are littered with technology that has been introduced from above without the kind of internal remodeling that is necessary for proper utilization. Local programs might determine how to integrate universal service opportunities under the Telecommunications Act with hardware needs of the schools. A localized approach might better harmonize these strands than would a statewide or national rule.

Thus, while there are common statements that can be made about K-12 needs across the country, particularization should be encouraged. Regarding Sections 80, 82-83 of the NPRM, what I suggest, therefore, is the inclusion within any rulemaking proposal of incentives for local accommodations--universal service social contracts--that would then have some presumptive validity for further state or federal consideration.

For example, in a major urban area: the FCC could propose the formation of Urban Advanced Telecommunications for Public Education Trusts which would:

- a) bring together the interested parties to develop a proposal for universal service, including the services to be provided and the discounts to be involved in providing such services;
- b) monitoring the implementation of the provision of these services;
- c) studying comparable patterns of using advanced telecommunications;
- d) providing a forum for articulating evolving needs and opportunities for reclassifications;
- e) providing a context-based definition of affordability.

In an area like New York City, such a Trust could, for example, include representatives of NYNEX, competitive telecommunications providers, the cable television systems, the Board of Education, representatives of the parochial and the private schools. The entity could integrate universal service requirements with commitments of cable systems under the New York City franchise. The New York City Trust would consider the unique organization of the New York City public schools and determine what role district and community boards would play in the implementation of universal service. The conclusions of such an Urban Trust would be entitled to special review processes that would virtually guarantee telecommunications providers that compliance would satisfy federal and state requirements.

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The proposed rules would, if they encouraged such Urban Trusts, permit local creative solutions in which a nonprofit intermediary would gain expertise and an ongoing role that would increase the likelihood that universal service meant meaningful impact on the schools. Such Urban Trusts could aid in the periodic review of universal service mechanisms described in the NPRM at Section 2. Further, Local Reports to the Joint Board, the FCC, to the systems and to Congress would yield greater accountability.

Such a group would also assist in certifying that services were used for educational purposes and would prevent the kinds of harms (resale of universal service) that were outlined in Sections 84 and 85 of the NPRM. Under the proposed approach the FCC in its Rulemaking would allow room for such an Urban Advanced Telecommunications for Public Education Trust (or a rural counterpart) and establish the criteria that would make its determinations eligible for preferred treatment by state and federal review.

In accordance with the goal of specific and predictable support mechanisms (NPRM Section 3(5)), a local approach would provide flexibility in the system; encourage private initiatives; allow the molding of universal service possibilities to local needs and structures; and provide, in key communities, a mechanism that would monitor, report and be an advocate for useful fulfillment of the Congressional directive.

The author of these comments is the Director of the Howard M. Squadron Program in Law, Media and Society at Cardozo and was, for two years, the referee in Crawford v. L.A. Unified School District, a major case involving alleviating the harms of racial isolation in the Los Angeles public school system. The author was also a member of the Committee on Integrity in the New York City Public Schools, a body dealing with studying the danger of corruption in the delivery of services and the governance of public school districts in New York City.

Sincerely,

Monroe E. Price  
Professor of Law

Benjamin N. Cardozo School of Law

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